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No. 82-695
IN THE

Supreme Court of the United States

October Term, 1982

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant,

vs.

CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION OF APPELLEES TO DISMISS APPEAL OR IN THE ALTERNATIVE, TO AFFIRM THE DECISION BELOW.

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Questions Presented.

1. Does the United States District Court possess subject matter jurisdiction, under the provisions of 28 U.S.C. Sections 1331, 1441(a) and 1337, of a lawsuit filed by a state agency against a trust fund regulated pursuant to the provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, *et seq.* ("ERISA") where the complaint specifically seeks a declaratory judgment that the pre-emptive provisions of ERISA do not immunize the trust fund from the imposition of liens created by state law, and where the agency specifically challenges an advisory opinion of the U.S. Department of Labor finding that the trust fund is immune from such levies?

2. Do the provisions of Section 514 of ERISA, 29 U.S.C. Section 1144, explicitly or impliedly preempt the right of the State of California to levy on the assets of an employee benefit trust fund subject to regulation under ERISA, where the State's levy would interfere with the purposes for which the trust fund was created and would impose administrative expenses and burdens upon the trust fund unauthorized by federal law?

Parties to This Action.

The parties to this action are:

1. The Franchise Tax Board of the State of California.
2. The Construction Laborers Vacation Trust for Southern California.
3. Edward Ashton.
4. Al Atwood.
5. Gary Bronneck.
6. John R. Clarke.
7. R.C. Gallyon.
8. Richard Greenberg.
9. Roger Jaska.
10. William Middleton.
11. Tony Hoffman.
12. William R. McClain.
13. Armando Lopez.
14. Joe Rivera.
15. Ray M. Wilson.
16. James Keyes.
17. Boyd McDougal.
18. Carlos Cerna.

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FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
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vs.

CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA, *et al.*,
Appellees.

MOTION OF APPELLEES TO DISMISS APPEAL OR IN THE ALTERNATIVE, TO AFFIRM THE DECISION BELOW.

I.
PRELIMINARY STATEMENT.

Appellees Construction Laborers Vacation Trust for Southern California ("CLVT") and its Trustees, Edward Ashton, Al Atwood, Gary Bronneck, John R. Clarke, R.C. Gallyon, Richard Greenberg, Roger Jaska, William Middleton, Tony Hoffman, William R. McClain, Armando Lopez, Joe Rivera, Ray M. Wilson, James Keyes, Boyd McDougal and Carlos Cerna hereby move to dismiss the appeal filed and docketed in this Court in the within action, or, in the alternative, to affirm the decision of the U.S. Court of Appeals for the Ninth Circuit.

The alternative motions are made on each and all of the following grounds:

1. This Court lacks jurisdiction over this appeal, which does not raise a substantial Federal question.

2. If the Court should find that jurisdiction lies to hear this appeal, the decision of the United States Court of Appeals for the Ninth Circuit should be summarily affirmed; the issues raised by the appellant on appeal are without merit.

3. Probable jurisdiction of the appeal should not be noted because the decision of the Court of Appeals for the Ninth Circuit is consistent with statutory and case law.

4. Appellant lacks standing to pursue its claim that 28 U.S.C. Section 1144 violates the Tenth Amendment to the U.S. Constitution. The issue was never raised or decided below.

II.
OPINIONS BELOW.

The opinion of the U.S. Court of Appeals for the Ninth Circuit was filed on June 22, 1982; it is reported at 679 F.2d 1307 (Appendix A to Jurisdictional Statement). The Order of the U.S. Court of Appeals for the Ninth Circuit denying the Petition for Rehearing was filed on July 21, 1982 and is not officially reported (Appendix D to the Jurisdictional Statement). The Judgment of the U.S. District Court for the Central District of California was entered on December 4, 1980; it is not officially reported (Appendix B to the Jurisdictional Statement).

III.
STATUTES INVOLVED.

In addition to the statutes set forth in the Jurisdictional Statement of the Franchise Tax Board, the following statutes are material to this proceeding:

1. 29 U.S.C. Section 1103(c)(1), which provides, in pertinent part:

> "... [T]he assets of a plan ... shall be held for the exclusive purposes of providing benefits to participants

in the plan and their beneficiaries and defraying reasonable expenses of administering the plan."

2. 29 U.S.C. Section 1104(a)(1), which provides, in pertinent part:

". . . A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —

(A) For the exclusive purposes of: (i) providing benefits to participants and their beneficiaries and (ii) defraying reasonable expenses of administering the plan; . . . (and)

(D) In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter."

IV.
PROCEEDINGS BELOW.

This is an action instituted by the Franchise Tax Board of the State of California ("the Board") against the Construction Laborers Vacation Trust for Southern California ("CLVT") and its individual Trustees ("Trustees"). The action was originally filed in the Superior Court of the State of California for the County of Los Angeles. Within thirty days after service of the action, the CLVT and the Trustees filed a Petition for Removal of the action to the United States District Court for the Central District of California. The Board filed a Motion for Remand, which was denied by the U.S. District Court.

The CLVT filed a Motion to Dismiss the Complaint, together with a supporting memorandum. The Board timely filed a written opposition to the Motion to Dismiss. The U.S. District Court elected, with the consent of the parties, to treat the Motion to Dismiss as if cross-motions for summary judgment had been filed. Treating the Motion to Dismiss in this fashion, the District Court granted summary

judgment in favor of the Board and denied summary judgment to the CLVT.

The CLVT filed a timely Notice of Appeal, and the case was briefed and argued before a panel of the U.S. Court of Appeals for the Ninth Circuit. On June 22, 1982, the Court of Appeals issued a decision, one judge dissenting, reversing the decision of the U.S. District Court and remanding the case for further proceedings.

The Board filed a Notice of Appeal to the Supreme Court of the United States on September 17, 1982 with the clerk of the U.S. Court of Appeals for the Ninth Circuit. On October 18, 1982, the appeal was docketed, and the Board's Jurisdictional Statement was filed.

V.
STATEMENT OF FACTS.

The facts in the within action are undisputed. The following facts appear in the Complaint in this action:[1]

1. This is an action instituted by the Franchise Tax Board of the State of California (the "Board") against the Construction Laborers Vacation Trust for Southern California ("CLVT") and its Trustees ("Trustees"). The action seeks to obtain a declaratory judgment that it is empowered to issue Notices to Withhold, under the provisions of California Revenue & Taxation Code Section 18817, to employee benefit trust funds governed by the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA").

2. The CLVT is an employee benefit Trust, established through collective bargaining between the Southern California District Council of Laborers (the "Union") and various employers' associations. (See Complaint, Appendix "A," Exhibit "A".)

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[1]A copy of the Complaint, and pertinent portions of the exhibits appended thereto, appear as Appendix "A" to this motion.

3. The CLVT is administered by a Board of Trustees, eight of whom are designated by the Union, and eight of whom are designated by the employers' associations. (*Id.*)

4. Employers bound to collective bargaining agreements with the Union are obligated to make contributions to the CLVT for each hour of work performed by laborers whose work is covered by such agreements. (*Id.*)

5. The Trustees of the CLVT administer the CLVT pursuant to the terms of a Trust Agreement promulgated by the settlors of the Trust. (*Id.*)

6. The contributions made by employers to the CLVT are accumulated by the CLVT, which maintains a "vacation account" for each covered laborer. Annually, at a time specified by the Trustees, a check for the accumulated vacation benefits is paid to each covered employee, when the employee has satisfied the requirements set forth in the Trust Agreement. (*Id.*)

7. The CLVT is a type of forced savings plan, or "spendthrift" trust designed to insure that the beneficiaries (individual laborers) do not dissipate the benefits they are eligible to receive through the Trust until they are actually eligible for each year's lump sum payment. The Trust Agreement contains stringent provisions designed to insure that covered workmen do not use their Trust accounts to obtain credit or otherwise dispose of the sums payable to them before they are actually received.[2]

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[2]Article 9.08 of the Trust Agreement provides:

"It is the intent and purpose of the Plan, and of this Agreement, and a material part of the consideration for the making of contributions to the Fund by individual employers, that the money in each vacation account shall be received by the employee entitled thereto *personally*. Accordingly, *no payments due the Fund and no monies in the vacation accounts established pursuant to the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any employee or other person and any such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge shall be void and ineffective*. The money credited to a vacation account shall be subject to withdrawal and distribution *only* at the

(footnote continued on following page)

8. From time to time, the CLVT receives Notices to Withhold, issued by the Board, seeking to require the CLVT to set aside funds which the Board claims individual laborers owe the State of California in back taxes and/or penalties.[3]

9. The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1001, *et seq.*, regulates the operation of "employee benefit plans." It is un-

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times and *in the manner* and *for the purposes* specified in this Agreement." [Emphasis supplied.]

Similarly, Section 4.06 of the Trust Agreement provides:

"Each employee or beneficiary under the Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of his benefits hereunder or any other right or interest under the Plan, and the Board of Trustees shall not recognize, or be required to recognize, any such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such benefit, right or interest shall not be subject in any manner to voluntary transfer *or transfer by operation of law* or otherwise, and shall be exempt from the claims of creditors or other payments and from all orders, decrees, garnishments, executions or other legal or equitable process of proceedings to the fullest extent permissible by law."

[3]The authority of the Board to issue such Notices to Withhold is contained in California Revenue & Taxation Code Section 18817, which provides:

"The Franchise Tax Board may by notice, served personally or by first class mail, require any employer, person, officer or department of the State, political subdivision or agency of the State . . . having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a taxpayer . . . to withhold, from such credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer . . . and to transmit the amount withheld to the Franchise Tax Board at such times as it may designate."

disputed that vacation trusts like the CLVT are "employee welfare benefit plans" within the meaning of ERISA.[4]

10. In order to determine whether the Trust is obligated to respond to the process of state judicial and administrative agencies seeking to levy upon benefits due beneficiaries of the Trust, co-counsel for the Trust wrote to the U.S. Department of Labor, which is charged with administering portions of ERISA, to request an advisory opinion. On December 28, 1979, the U.S. Department of Labor issued an advisory opinion stating, in pertinent part:

> "It is the position of the Department of Labor that the process of any state judicial or administrative agency seeking to levy for unpaid taxes or unpaid unemployment insurance contributions upon benefits due a participant or beneficiary under the Plan is preempted under ERISA §514."[5] (App. "A," Exh. "H.")

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[4]29 U.S.C. Section 1002(1) provides, in pertinent part:

"The terms 'employee welfare benefit plan' and 'welfare plan' mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or *vacation benefits*, apprenticeship or other training programs . . ."

29 U.S.C. Section 1002(3) goes on to provide:

"The term 'employee benefit plan' or 'plan' means an employee benefit plan or an employee pension plan or a plan which is both an employee benefit plan and an employee pension plan."

[5]Section 514 of ERISA, 28 U.S.C. Section 1144, provides, in pertinent part, as follows:

"(a) Except as provided in subsection (b) of this section, the provisions of this title and Title IV shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in Section IV(a) and not exempt under Section IV(b). This section shall take effect January 1, 1975 . . .

* * *

(footnote continued on following page)

11. The Advisory Opinion of the Department of Labor concludes that the garnishment by state agencies of the assets of ERISA-regulated trust funds would be inconsistent with the provisions of Sections 403(c) and 404(a)(1) of ERISA, which generally forbid the disbursement of trust fund assets except to provide benefits and defray trust fund expenses.[6]

12. Based on the advisory opinion letter issued by the U.S. Department of Labor, the CLVT has not processed the Notices to Withhold issued by the Board.

VI.
ARGUMENT.

A. The U.S. District Court Properly Assumed Jurisdiction of This Action.

This action was originally filed in the Superior Court of the State of California for the County of Los Angeles. On June 26, 1980, the CLVT and the Trustees filed a Petition for Removal of the action to the U.S. District Court for the

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(c) For purposes of this section:

(i) The term 'state law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any state. A law of the United States applicable only to the District of Columbia shall be treated as a state law rather than a law of the United States.

(ii) The term 'state' includes a state, any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, *directly or indirectly*, the terms and conditions of employee benefit plans covered by this title." [Emphasis supplied.]

[6]Section 403(c) of ERISA provides, in pertinent part, that "The assets of a plan . . . shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." 29 U.S.C. Section 1103(c)(1).

Section 404(a)(1) of ERISA provides, in pertinent part, that

". . . A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan." 29 U.S.C. Section 1104(a)(1).

Central District of California. The Petition for Removal recites, *inter alia*, that removal jurisdiction is proper pursuant to the provisions of 28 U.S.C. Section 1441.

Any civil action of which the federal district courts would have original jurisdiction "founded on a claim or right arising under the Constitution, treatise or laws of the United States" is properly removable to a U.S. District Court, if filed in a state court. See 28 U.S.C. Section 1441(b).

The question of what types of cases "arise under" the laws of the United States is a troublesome one, which has generated much litigation. As the Board notes in its Jurisdictional Statement, it has generally been held that the jurisdictional basis for the claim must be established by reference solely to the complaint. See *Skelley Oil Co. v. Phillips Petroleum Co.* (1950), 339 U.S. 667, 673-674; *Gully v. First National Bank* (1936), 299 U.S. 109, 113; *Wong v. Bacon* (N.D. Cal. 1977), 445 F.Supp. 1177, 1182.

In the present case, the Complaint makes detailed and explicit reference to the provisions of ERISA on which the present dispute turns. The Board alleges, in its Complaint, that it has issued Notices to Withhold, pursuant to California Revenue & Taxation Code Section 18817, to the CLVT and that the CLVT has notified the Board that it "would not disburse the funds levied upon to either [the Trust beneficiaries involved] or to the Board pending the receipt of an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor, as to whether defendants are permitted to honor said liens under the provisions of the Employee Retirement Income Security Act of 1974." (See Complaint, App. "A," Paras. 9, 11 and 14.)

The Complaint further alleges that on January 7, 1980, the CLVT notified the Board that "the defendants would not honor levies made upon them by the State of California pursuant to an advisory opinion from the United States Department of Labor." (Complaint, App. "A," Para. 15.)

The U.S. Department of Labor's advisory opinion is attached as Exhibit H to the Complaint. The opinion letter extensively discusses the application of the preemptive provisions of ERISA to the facts of this case, and holds that the assets of the Trust are exempt from execution under the process of any state, judicial or administrative agency because of the general preemptive provisions of ERISA. (App. "A," Exh. "H.")

Thus, there can be no serious question that the Complaint and the exhibits incorporated therein, fully raise the federal question at issue in this case.

The Board appears to contend that federal question jurisdiction does not exist because the *remedy* invoked by the Board is conferred by state law. However, it is now well settled that the controlling question is not whether the *remedy* is federally provided, but whether the determinative issues in the case necessarily require interpretation of federal law. This Court has explicitly rejected the proposition that the "cause of action" must be one arising under federal law.[9]

In *Gully v. First National Bank*, 299 U.S. 109, 112 (1936), relied upon by the Board, it was held that federal question jurisdiction would exist when the right asserted was such that "it will be supported if the . . . laws of the United States are given one construction or effect, and defeated if they receive another." This is clearly a case in which the right of the Board to levy tax assessments on the CLVT "will be supported if the . . . laws of the United States are given one construction or effect, and defeated if

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[9] "Although it has sometimes been suggested that the 'cause of action' must derive from federal law, it has been found sufficient that some aspect of federal law is essential to plaintiff's success. The litigation-provoking problem has been the degree to which federal law must be in the forefront of the case and not the remote, collateral or peripheral." *Association of Westinghouse Salaried Employees v. Westinghouse Electrical Corporation*, 348 U.S. 437, 450, 75 S.Ct. 489, 495 (1955). [Plurality opinion of Frankfurter, J.]

they receive another." That, in fact, is the whole point of this lawsuit.

The circuit courts of appeal have also expressed the view that the remedy sought is not determinative. In *T.B. Harms Co. v. Eliscu*, 339 F.2d 823 (2d Cir. 1964), the Second Circuit Court of Appeals stated that "even though the claim is created by state law, a case may 'arise under' a law of the United States if the complaint discloses a need for determining the meaning or application of such a law." 339 F.2d at 827.[10]

The Board seeks to avoid the application of these time-tested principles by arguing that the application of ERISA to the facts of this case is purely a matter of defense, which is not a proper ground for the invocation of federal jurisdiction. Even where the federal question is primarily a matter of defense, however, the courts have held jurisdiction to be proper, if the defendant could have brought its own declaratory judgment action in federal court to construe the controlling federal statute:

> "It is plain that the federal law that gives rise to a federal question must be an element of the plaintiff's

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[10]Other courts have adopted the so-called "pivotal question" formulation:

> "The Second Circuit has stated that the test of whether a complaint presents a federal question is 'whether the complaint is for a remedy expressly granted by an act of Congress or otherwise "inferred" from federal law, or whether a properly pleaded "state created" claim itself presents a "pivotal question of federal law," for example because an act of Congress must be construed' . . . ." *Ivy Broadcasting Co. v. American Telephone & Telegraph Co.*, 391 F.2d 486, 489 (2d Cir. 1968).

Essentially the same test was adopted by the Third Circuit in *Warrington Sewer Company v. Tracy*, 463 F.2d 771 (3d Cir. 1972); *see also Garrett v. Time-D.C., Inc.*, 502 F.2d 627 (9th Cir. 1974).

See also Mountain Fuel Supply Co. v. Johnson, 586 F.2d 1375, 1381 (10th Cir. 1978); *Lindy v. Lynn*, 501 F.2d 1367, 1369 (3d Cir. 1974); *Sweeny v. Abramovitz*, 449 F.Supp. 213 (D. Conn. 1978). *See generally*, Note, "The Outer Limits of 'Arising Under,' " 54 NYU L.Rev. 978 (1979).

> complaint. The well-pleaded complaint rule precludes taking jurisdiction on the basis of an anticipated federal defense. However, a suit for a declaratory judgment that defendant does not have a right under federal law, in circumstances in which a coercive action by the defendant based on his supposed federal law right would be cognizable in federal court, is now held to be within federal question jurisdiction." 13 Wright & Miller, *Federal Practice & Procedure*, Section 3562 (West 1975).

In this action, it is quite clear that the CLVT and its Trustees could have brought a suit in federal court, to obtain a declaratory relief regarding the right of the CLVT to be immune from garnishment orders issued by state agencies.[11] The suit is in its present posture solely due to the happenstance that the Board elected to bring suit first. Regardless of the party initiating the declaratory relief action, the "pivotal question" for a decision is the same: Whether ERISA preempts the right of the State of California to levy upon trust assets. *Cf. Shareholders Management Co. v. Fred F. Gregory*, 449 F.2d 326 (9th Cir. 1971).

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[11]Federal courts have occasionally realigned the claims of the parties in order to eliminate any question regarding the propriety of federal jurisdiction. In *Wong v. Bacon*, 445 F.Supp. 1177 (N.D. Cal. 1977), a U.S. District Court found that the plaintiffs' original complaint, seeking restitution of improper trust fund payments under California law, did not adequately raise a federal issue. However, the answer of the defendant trustees raised important federal questions under ERISA. Rather than dismiss the action, the U.S. District Court elected to view the defendants' answer as a "counterclaim for a declaratory judgment against plaintiffs." Having characterized the pleadings in this fashion, the Court found that the Court-created "counterclaim" adequately raised a federal question and that jurisdiction was proper. No such judicial legerdemain was necessary in this action. The Board's Complaint clearly raises the federal issue. However, the *Wong* case is noteworthy because it demonstrates that federal courts recognize the important federal legal issues at stake in cases raising the issue of preemption under ERISA.

The assumption of jurisdiction by the U.S. District Court in this case is consistent with the foregoing decisions, and with considerations of public policy. Obviously, the result in this action depends entirely upon the interpretation of a complex piece of federal legislation. Federal courts possess the experience and expertise to treat difficult questions of preemption. Such questions have been routinely raised and resolved in federal court proceedings. See, *e.g.*, *Lafferty v. Solar Turbines International*, 666 F.2d 408 (9th Cir. 1982); *Armco, Inc. v. Ludwick*, 3 EBC 1574 (D. Kan. 1982); *Hotel and Restaurant Employees v. Danzinger*, 3 EBC 1552 (D. N.J. 1982); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 101 S.Ct. 1895 (1981); *Delta Airlines, Inc. v. Kramarsky*, 666 F.2d 21 (2d Cir. 1982).

B. The Court of Appeals Correctly Held That the State's Right to Garnish Trust Assets Is Preempted by ERISA.

1. Section 514's Preemption of State Law Is Plainly Worded and Is Virtually Total.

The extreme breadth of federal preemption intended by Congress in enacting ERISA is manifest in the language of Section 514, quoted *supra*. Section 514(b) expressly enumerates the *only* categories of state laws saved from the otherwise total preemption of Section 514(a). These enumerated exceptions in no way protect the California laws in question. Indeed, subsection (4) of Section 514(b) further evidences the pervasiveness of the provision's basic preemption by providing:

> Subsection (a) of this section shall not apply to any generally applicable *criminal* law of a State.

29 U.S.C. Section 1144(b)(4). (Emphasis added.) There is no such general provision relating to civil laws.

The legislative intent underlying ERISA preemption is clear. Rejecting narrower formulations of preemption, Congress adopted Section 514 with the express intent of fore-

closing "endless litigation" over the "perimeters of preemption."[12]

Congress was cognizant of the potential consequences inherent in its foreclosing litigation over the scope of Section 514. It recognized that its abrogation of the judiciary's power to define preemption on a case-by-case basis could result in unanticipated distortions. Accordingly, Congress provided a safety valve, a forum for consideration of such cases. That forum was not the courts, however; *it was Congress itself*. In Section 3022 of ERISA, Congress instructed the Joint Pension Task Force to monitor the effects and continuing desirability of its broad federal preemption of state laws relating to plans and to report the findings back to Congress for review and possible action. ERISA Section 3022(a)(4); (29 U.S.C. Section 1222(a)(4)).

In enacting ERISA, Congress burdened employee benefit plans with complicated and costly administrative and structural requirements regarding disclosure, fiduciary responsibility and other matters for the purpose of protecting plan participants. At the same time Congress acknowledged that employee benefit plans were voluntary and that ERISA had to be tailored *whenever possible* to reduce the burdens upon the plans. Congress expressly noted that disregard of this latter reality could produce an anomalous result. The statute

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[12]A number of commentators have urged that the preemption provisions of ERISA be read broadly. See, *e.g.*, Hutchinson and Ifshin, "*Federal Preemption of State Law Under the Employee Retirement Income Security Act of 1974*," 45 U.Chi.L.Rev.23 (1978):

> "We conclude that Congress intended to preempt almost all state regulation of employee pension and welfare benefit plans, but that courts have often defined the scope of preemption more narrowly where preemption may create what appear to be undesirable regulatory lacunae or supersede state law in fields traditionally left to state governance. We argue that this continued whittling away of the preemptive reach of ERISA seriously threatens the regulatory scheme devised by Congress, and that it is up to Congress, not the courts, to narrow ERISA's preemption of state law where particular policy reasons make such action appropriate." *Id.* at 23-24.

designed to protect plan participants could prompt termination of the very plans in which they participate — in legislating the laying of golden eggs, Congress could kill the goose. *See* S. Rep. No. 383, 93rd Cong., 2d Sess. 18-19 (1973).

The Congressional mandate to the judiciary is thus clear in language, in legislative history, and in motive. Until further notice from Congress, ERISA's preemption of state law is inviolate. To the extent California's laws relate to employee benefit plans, they are preempted.

2. Congress Intended Section 514's Total Preemption to Be Given Full Effect by the Judiciary.

The legislative history of ERISA establishes that Congress intended the exceptional preemptive sweep evoked by the "plain words" of Section 514 to be given full effect. During the legislative hearings which preceded the enactment of ERISA, both houses of Congress were considering versions of a bill to regulate employee benefit plans. H.R. 2 (93rd Cong., 1st Session (1973)), from which the language of ERISA is largely derived, originally contained a preemption provision which was limited in scope. However, during the course of Joint House-Senate Conference Committee hearings to draft the final version of ERISA, a much more sweeping preemption provision was substituted. The Conference Report explains:

> Under the substitute, the provisions of Title I are to supersede all state laws that relate to any employee benefit plan that is established by an employer engaged in or affecting interstate commerce or by an employee organization that represents employees engaged in or affecting interstate commerce.

S. Rep. 1090 [H. Rep. 1280], 93rd Cong., 2d Sess. 383 (1974) *reprinted in* "Legislative History of the Employee Retirement Income Security Act of 1974," Committee

Print, 94th Cong., 2d Sess. 4650 (1976) (hereinafter "*Legislative History*").[13]

The remarks of Senator Jacob Javits, bill co-sponsor and senior minority member of the Senate Committee on Labor and Public Welfare, further amplify and delineate the Congressional preemptive scheme in ERISA. Senator Javits stated:

> Both House and Senate bills provided for preemption of state law, but — with one major exception appearing in the House bill — defined the perimeters of preemption in relation to the areas *regulated* by the bill. Such a formulation raised the possibility of endless litigation over the validity of state action that might impinge

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[13]Senator Harrison Williams, Jr., bill co-sponsor and Chairman of the Senate Committee on Labor and Public Welfare, issued the following explanatory statement regarding the preemptive provisions of ERISA:

> It should be stressed that, with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for federal regulation, thus eliminating the threat of conflicting or inconsistent state and local regulation of employee benefit plans. This principle is intended to apply *in its broadest sense* to all actions of state or local governments, or any instrumentality thereof, which have the force or effect of law. [Emphasis supplied].

120 Cong. Rec. 2933 (1974); *Legislative History* at 4745-46.

Congressman John Dent, Chairman of the Subcommittee on Labor of the House Labor and Education Committee, sounded the same note:

> Finally, I wish to make note of what is to many the crowning achievement of this legislation, *the reservation to federal authority of the sole power to regulate the field of employee benefit plans*. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent state and local regulation . . . The conferees, *with the narrow exceptions specifically enumerated, applied this principle in its broadest sense* to foreclose any non-federal regulation of employee benefit plans. Thus, the provisions of Sec. 514 would reach any rule, regulation, practice or decision of any state, subdivision thereof, or any agency or instrumentality thereof — including any professional society or association operating under color of law — which would *affect* any employee benefit plan as described under Sec. 4(a) and not exempt under Sec. 4(b). [Emphasis supplied].

120 Cong. Rec. 29197 (August 20, 1974); *Legislative History* at 4670.

upon federal regulation, as well as opening the door to multiple and potentially conflicting state laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected with the federal regulatory scheme.

Although the desirability of further regulation — at either the state or federal level — undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive federal interest and interests of uniformity with respect to interstate plans required — but for certain exceptions — the displacement of state action in the field of private employee benefit programs.

The conferees — recognizing the dimensions of such a policy — also agreed to assign the Congressional Pension Task Force the responsibility of studying and evaluating preemption in connection with State authorities and reporting its findings to the Congress. If it is determined that the preemption policy devised has the effect of precluding essential legislation at either the State or Federal level, appropriate modifications can be made.

120 Cong. Rec. 29942 (August 22, 1974); *Legislative History* at 4770-71.

3. Other Courts Have Not Hesitated to Recognize the Breadth of ERISA's Preemption of State Law.

Numerous court decisions have recognized the broad reach of ERISA's preemption provisions;[14] see *Hewlett-Packard Co. v. Barnes*, 425 F.Supp. 1294 (N.D. Cal 1977),

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[14]The only area in which the majority of courts have failed to find that ERISA preempts state laws which impinge upon the operation of ERISA-regulated trusts is that of domestic relations. In *Stone v. Stone*, 450 F.Supp. 919 (N.D. Cal. 1978), *aff'd.* 632 F.2d 740, a U.S. District Court held that the preemption provisions of ERISA did not preempt California community property laws which might require a spouse to pay a portion of his trust benefits to an ex-spouse or dependent. How-

(footnote continued on following page)

aff'd. 571 F.2d 502 (9th Cir. 1978); *Bell v. Employee Security Benefit Association,* 437 F.Supp. 382 (D. Kansas 1977); *Standard Oil Co. of California v. Agsalud,* 442 F.Supp. 695 (N.D. Cal. 1977), *aff'd.* 633 F.2d 760 (9th Cir. 1980); *Buczynski v. General Motors Corp.,* 616 F.2d 1238 (3d Cir. 1980), *aff'd. sub nom. Alessi v. Raybestos-Manhattan, Inc.,* 451 U.S. 504, 101 S.Ct. 1895 (1981).

The general view of the majority of courts was aptly expressed in the *Bell* decision, *supra:* "In light of this legislative history, we conclude that federal preemption in the area of pensions and other employee benefit programs is virtually total." 437 F.Supp. at 387.

4. The California Garnishment Laws at Issue Directly Encroach Upon the Provisions of ERISA Regulating the Disbursal of Trust Monies.

Sections 403(c)(1) and 404(a)(1) of ERISA, quoted *supra*, restrict the disbursal of trust funds. Section 403(c)(1) is a portion of the statute requiring employee benefit plan assets to be held in trust; Section 404(a)(1) is a portion of the statute describing a fiduciary's obligations regarding the disposition of trust fund assets.

The obvious purpose of these provisions is to keep assets of an employee benefit plan from being disbursed to third parties except in limited and carefully controlled circumstances, thereby eliminating the possibility that such assets will be diverted from their intended use. Although ERISA permits benefit plan assets to be paid to persons other than

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ever, the court's holding was explicitly premised on a recognition of the state's critical interest in regulating the sensitive area of family law:

> "Both Congress and the courts recognize that the whole subject of domestic relations of husband and wife, parent and child, belongs to the laws of the states and not to the laws of the United States." *Buechold v. Ortiz,* 401 F.2d 371, 372 (9th Cir. 1968), quoting *Ohio ex rel. Popovici v. Agler,* 280 U.S. 379, 383, 50 S.Ct. 154, 74 L.Ed. 489 (1930). Congress does not infringe *sub silentio* the power to make rules to establish, protect, and strengthen family life [which] is committed by the Constitution of the United States to the legislature of [each state]. *Labine v. Vincent,* 401 U.S. 532, 538, 91 S.Ct. 1017, 1021, 28 L.Ed.2d 288 (1971)."

trust beneficiaries in certain clearly defined instances, it contains no authorization permitting the Trustees to respond to levies and garnishments issued by local or state agencies.[15]

Sound reasons exist for the application of the preemption doctrine in cases such as the present one.[16] Consider the following points:

1. The whole purpose of a "spendthrift" trust such as the Construction Laborers Vacation Trust for Southern California is to create a pool of savings for each individual, to which he will only have access at a specified time. Thus,

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[15]The Board argues that nothing in ERISA explicitly forbids a state from applying sequestration remedies against an ERISA-regulation trust fund. This argument misses the point. As this Court held in *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 101 S.Ct. 1895 (1981), the states are not permitted to apply laws to such trusts which would narrow their federally sanctioned operations. The CLVT Trust Agreement provides that the CLVT's assets shall not be disbursed except to beneficiaries in a specifically prescribed fashion. This is consistent with the command of ERISA that the assets of such a trust "shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." 29 U.S.C. Section 1103(c)(1). By attempting to apply a state law which would, in effect, mandate an exception to the provisions of the Trust Agreement and the command of ERISA, the state has encroached upon the operation of the CLVT in precisely the way this Court found to be forbidden in *Alessi*.

The Second Circuit Court of Appeals has analyzed *Alessi* as holding, inter alia, that "a state statute that eliminates from ERISA-covered employee benefit plans features that are permitted by federal law is preempted." *Delta Airlines, Inc. v. Kramarsky*, 666 F.2d 21, 25 (2nd Cir. 1982), *probable jurisdiction noted* ... U.S. ..., 102 S.Ct. 1968 (1982). The present case fits within the language quoted from *Kramarsky*. Here, the application of the challenged California statute would effectively eliminate a feature of the CLVT which ERISA permits: exemption of the assets of the trust fund from garnishment by creditors of beneficiaries, until the funds are distributed to the beneficiaries.

[16]The Board also argues that the CLVT is not entitled to claim the protection of the preemptive provisions of ERISA, because ERISA regulates pension plans more comprehensively than other types of employee benefit trusts. This argument overlooks the fact that each of the statutory provisions upon which the CLVT relies fall within the provisions of ERISA relating to *all* employee benefit plans. See ERISA, Section 514, 29 U.S.C. Section 1144; ERISA, Section 403(c)(1), 29 U.S.C. Section 1103(c)(1).

the Trust Agreement specifically precludes the hypothecation of trust fund assets (see Statement of Facts, *supra*). If creditors of beneficiaries of the Trust, including the Board, can reach Trust assets through garnishment, the entire purpose of the Trust will be frustrated.

2. If such creditors know that they can reach Trust assets to satisfy their claims, the beneficiaries of the Trust will be able to do indirectly what they cannot do directly, *i.e.*, use Trust assets to satisfy debts and divert portions of their regular (non-Trust) income to other purposes. Beneficiaries who wish to obtain credit may over-extend themselves financially by telling finance companies, car dealers, and other parties that their Trust benefits are a "backup" to their regular income.

3. The administrative expense of having to respond to garnishment notices and claims of judgment creditors on a continuous basis will significantly enlarge the administrative expense of operating the Trust. This will shrink the amount of assets available for the beneficiaries.

4. Only workmen who are actually employed under the terms of a collective bargaining agreement have contributions made to the Trust for their benefit. These workmen are receiving wages, which are subject to garnishment in any event. There is no practical reason why the state cannot proceed, as it usually does, to attempt to garnish wages, rather than attempt to reach assets of the Trust to which the employee is not yet entitled.

5. When the employee *does* receive his payment from the Trust (which occurs on an annual basis), the state can use the remedies at its disposal to levy on the funds in the employee's hands. This relieves the Trust of the administrative burden of responding to large numbers of Notices to Withhold and other types of garnishments and levies, and places the burden of dealing with such matters where it belongs, *i.e.*, on the employee, his employer, and his creditors.

A second reason for finding the application of state sequestration laws preempted appears in this Court's opinion in *Alessi v. Raybestos-Manhattan, Inc., supra.* Vacation trusts, like the pension plans considered in *Alessi*, are creatures of collective bargaining, which have long enjoyed sanction under federal law. *See* Section 302(c)(6), 29 U.S.C. Section 186(c)(6). Such trusts, which "emerge from collective bargaining" call forth "the additional federal interest in precluding state interference with labor-management negotiations . . ." and "as a subject of collective bargaining, [their] terms themselves become expressions of federal law, requiring preemption of intrusive state law." *Alessi, supra*, 101 S.Ct. at 1907.

This Court has repeatedly expressed its concern that state laws not be permitted to interfere in areas of paramount federal cocern, even if they do not directly conflict with federal statutory provisions; see, *e.g., Teamsters v. Oliver*, 358 U.S. 283, 296, 79 S.Ct. 297, 304 (1959); *Amalgamated Assn. of Street, Electric R. and Motor Coach Employees v. Lockridge*, 403 U.S. 274, 91 S.Ct. 1909 (1971); *San Diego Building Trades Council v. Garmon*, 359 U.S. 326, 79 S.Ct. 773 (1959). After the passage of ERISA, there can be no serious question that the regulation of employee benefit plans is such an area of paramount federal concern.

5. Deference Should Be Accorded to the Determination of the Department of Labor That ERISA Preempts State Garnishments.

As previously noted, the Department of Labor has issued an Advisory Opinion, holding that the preemption provisions of ERISA preclude the State of California and its instrumentalities from garnishing or levying upon assets held by the CLVT.

With the exception of tax matters and certain other specialized areas which are reserved to other departments, the Secretary of Labor is given general authority to issue regulations, investigate claims and initiate litigation to enforce

the provisions of ERISA; *see* 29 U.S.C. Sections 1132(a), 1132(h), 1132(i), 1132(j), 1133, 1134(a), and 1135.

Though the Advisory Opinion of the Department of Labor is admittedly not a "legislative regulation," it is an interpretative determination, entitled to the measure of deference accorded such rulings. *Cf. Buczynski v. General Motors Corporation*, 616 F.2d 1238, 1242, *aff'd. sub nom. Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 101 S.Ct. 1895, 1903, n. 13 (1981). The Ninth Circuit's ruling is consistent with the Advisory Opinion of the Department of Labor, and with the language of ERISA's preemption provisions.

C. The Court Should Refuse Consideration of Appellant's Constitutional Claim.

The Board urges, as a ground of appeal, that if ERISA preempts state garnishment statutes, such preemption violates the Tenth Amendment to the U.S. Constitution by interfering with the sovereign power of the State of California to assess and uniformly collect taxes.

This issue was not raised in the U.S. District Court, or in the U.S. Court of Appeals. The undisputed facts which constitute the record below do not include any factual stipulations relating to the alleged "interference" with California's power to assess and collect taxes. Full factual development is a prerequisite before constitutional issues may properly be considered.[17] *See e.g., Alma Motor Co. v. Timkin-Detroit Axle Co.*, 329 U.S. 129, 67 S.Ct. 231 (1947).

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[17]The absence of full factual development and the potentially incomplete record resulting therefrom, is one of the reasons this Court has consistently refused to hear constitutional claims in appeals from State court actions, where those claims have not been initially pursued in the State courts themselves; see *Webb v. Webb*, 451 U.S. 493, 101 S.Ct. 1889, 1893 (1981); *Cardinale v. Louisiana*, 394 U.S. 437, 89 S.Ct. 1161 (1969).

Certainly, the present record does not support the State's claim that ERISA §514(a) interferes, in any meaningful way, with the assessment and collection of taxes. All the preemption provision does is prevent the State of California from garnishing trust fund assets *before* those assets are distributed to their intended beneficiaries. There is no showing in this record that there is any "essential" interest possessed by the State of California in seizing assets of a trust fund (at considerable expense and disruption to the fund itself) rather than waiting for the assets to be distributed in due course.

The State's Tenth Amendment claim is therefore without merit and should be dismissed.

VII.
CONCLUSION.

The Appeal should be dismissed, or, in the alternative summarily affirmed.

Respectfully submitted,

JAMES P. WATSON,*
GEORGE M. COX,
COX, CASTLE & NICHOLSON,
LAW OFFICES OF LIONEL RICHMAN,
Attorneys for Appellees.

**Counsel of Record for Appellees.*

APPENDIX A.

[Note: All Exhibits to the Complaint have been omitted, except portions of Exhibit A and Exhibit H.]

Superior Court of the State of California
for the County of Los Angeles.

Franchise Tax Board of the State of California,
Plaintiff,

v.

Construction Laborers Vacation Trust for Southern California, Edward Ashton, Al Atwood, Gary Bronneck, John Clarke, R. C. Gallyon, Richard Greenberg, Roger Jaska, William Middleton, Louie Bravo, Benjamin T. James, George Mattocks, William R. McClain, Nick Orsura, Joe Rivera, Ray M. Wilson, James Keyes, as trustees and on behalf of Construction Laborers Vacation Trust for Southern California, DOES I to XXX, inclusive,
Defendants.

No. C326040.

Complaint for Failure to Honor Garnishment
and for Declaratory Relief.

COMES NOW, the People of the State of California, acting by and through the Franchise Tax Board of the State of California (hereinafter referred to as "the Board"), and for a first cause of action alleges as follows:

FIRST CAUSE OF ACTION

1. The Board is the duly constituted agency of the State of California charged with the enforcement of the Personal Income Tax Law of the State of California and is authorized pursuant to California Revenue and Taxation Code section

18817 to issue Notices to Withhold to enforce collection of unpaid tax liabilities.

2. The Board is informed and believes and on that ground alleges that at all times relevant hereto, defendant, Construction Laborers Vacation Trust for Southern California (hereinafter "Defendant Trust Fund"), is and was at all times mentioned herein, an express trust established on April 14, 1966, by written agreement and Declaration of Trust, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

3. Plaintiff is informed and believes and on that ground alleges that defendant Trust Fund's existence has been and now is dependent upon the said Agreement and Declaration of Trust and that its principal place of business is in the County of Los Angeles, State of California.

4. The Board is informed and believes and on that ground alleges that at all times relevant hereto, defendants Edward Ashton, Al Atwood, Gary Bronneck, John Clarke, R. C. Gallyon, Richard Greenberg, Roger Jaska, William Middleton, Louie Bravo, Benjamin T. James, George Mattocks, William R. McClain, Nick Orsura, Joe Rivera, Ray M. Wilson and James Keyes, have been duly appointed and acting trustees of the aforesaid Construction Laborers Vacation Trust for Southern California.

5. That the true names of defendants Doe I to Doe XXX inclusive are unknown to plaintiff and plaintiff will ask leave of this court to amend this complaint when their true names and capacities have been ascertained.

6. Jesse Murphy (hereinafter "Murphy"), while a resident of the State of California during the tax year ending December 1976, incurred personal income tax liability to the State of California under the Personal Income Tax Law

of the State of California and the following amounts remain due, owing and unpaid:

Year	Tax	Interest	Penalties	Total
December 1976	$37.00	$11.70	-0-	$48.70

Further interest accrues on the total amount of tax and interest bearing penalties from May 31, 1980 at $0.012 per day. A copy of the Certificate of Delinquency setting forth the above amount of indebtedness is attached hereto as Exhibit "B" and is incorporated herein by this reference as if set forth in full.

7. On or about September 20, 1978, the Board issued a Notice to Withhold to defendants pursuant to California Revenue and Taxation Code section 18817. Said Notice to Withhold enumerated the tax indebtedness of Murphy as described in paragraph 6 herein and directed that pursuant to California Revenue and Taxation Code section 18817, defendants withhold and transmit to the Board any credits or other personal property or other things of value in defendants' possession or under the its control belonging to said tax debtor Murphy.

8. On or about March 14, 1979, defendants informed the Board that they would not disburse the funds levied upon to either Murphy or to the Board pending the receipt of an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor as to whether defendants are permitted to honor said liens under the provisions of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"). A copy of said letter is attached hereto as Exhibit "C" and is incorporated herein by reference as if set forth in full.

9. Eriberto G. Salcedo (hereinafter "Salcedo"), while a resident of the State of California during the tax years ending December 1975 and December 1976, incurred per-

sonal income tax liability to the State of California under the Personal Income Tax Law of the State of California and the following amounts remain due, owing and unpaid.

Year	Tax	Interest	Penalties	Payments	Total
December 1975	$232.00	$67.38	$58.00	$189.00	$168.38
December 1976	30.00	8.57	0.00	0.00	38.57

Further interest accrues on the total amount of tax and interest bearing penalties from May 31, 1980 at $0.043 per day. A copy of the Certificate of Delinquency setting forth the above amount of indebtedness is attached hereto as Exhibit "D" and is incorporated herein by this reference as if set forth in full.

10. On or about September 20, 1977 and/or April 20, 1978, the Board issued a Notice to Withhold to defendants pursuant to California Revenue and Taxation Code section 18817. Said Notice to Withhold enumerated the tax indebtedness of Salcedo as described in paragraph 9 herein and directed that pursuant to California Revenue and Taxation Code section 18817 defendants withhold and transmit to the Board any credits or other personal property or other things of value in defendant's possession or under their its [sic] control belonging to said tax debtor Salcedo.

11. On or about January 18, 1978, defendants informed the Board that they would not disburse the funds levied upon to either Salcedo or to the Board pending the receipt of an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor as to whether defendants are permitted to honor said liens under the provisions of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"). A copy of said letter is attached hereto as Exhibit "E" and is incorporated herein by reference as if set forth in full.

12. Vincent Zarate (hereinafter "Zarate"), while a resident of the State of California during the tax year ending December 1977, incurred personal income tax liability to the State of California under the Personal Income Tax Law of the State of California and the following amounts remain due, owing and unpaid.

Year	Tax	Interest	Penalties	Payments	Total
December 1977	$586.00	$24.59	$28.32	$514.00	$124.00

Additional penalty on the total unpaid tax accrues from May 31, 1980, at $0.012 per day until April 15, 1981. Additional interest on the total unpaid tax and interest bearing penalties accrues from May 31, 1980, at $0.028 per day. A copy of the Certificate of Delinquency setting forth the above amount of indebtedness is attached hereto as Exhibit "F" and is incorporated herein by this reference as if set forth in full.

13. On or about September 20, 1978, the Board issued a Notice to Withhold to defendants pursuant to California Revenue and Taxation Code section 18817. Said Notice to Withhold enumerated the tax indebtedness of Zarate as described in paragraph 12 herein and directed that pursuant to California Revenue and Taxation Code section 18817 defendants withhold and transmit to the Board any credits or other personal property or other things of value in defendants' possession or under their its [sic] control belonging to said tax debtor Zarate.

14. On or about March 14, 1979, defendants informed the Board that they would not disburse the funds levied upon to either Zarate or to the Board pending the receipt of an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor as to whether defendants are permitted to honor said liens under the provisions of the Employee Retirement In-

come Security Act of 1974 (hereinafter "ERISA"). A copy of said letter is attached hereto as Exhibit "G" and is incorporated herein by reference as if set forth in full.

15. On or about January 7, 1980, defendants notified the Board that the defendants would not honor the levies made upon them by the State of California pursuant to an Advisory Opinion from the United States Department of Labor. A copy of said notification and its exhibit, the Advisory Opinion are attached hereto as Exhibit "H" and are incorporated herein by reference as if set forth in full.

16. The Board is informed and believes and on that ground alleges that at the time of the service of the Notice to Withhold referred to in paragraphs 7, 10, and 13 of this complaint, there existed in the said defendant Trust Fund monetary accruals in favor of Murphy, Salcedo and Zarate, which said defendants wrongfully failed and refused to pay over to the Board pursuant to said Notice to Withhold. The Board does not know the exact amount of the said accruals at this time and prays leave to amend this complaint to allege said amount when it has been ascertained through discovery.

17. By reason of the aforesaid failure and refusal of said defendants, the Board has been damaged in a sum equal to the then existing accruals in favor of Murphy, Salcedo and Zarate not to exceed $380.56 plus interest from June 1, 1980.

SECOND CAUSE OF ACTION.

18. The Board hereby incorporates by reference all the allegations contained in paragraphs 1 through 17 of the First Cause of action.

19. There was at the time of the levies alleged above and continues to be an actual controversy between the parties concerning their respective legal rights and duties. The

Board contends that defendants are obligated and required by law to pay over to the Board all amounts held in the Construction Laborers Vacation Trust for Southern California in favor of the Board's delinquent taxpayers. On the other hand, defendants contend that section 514 of ERISA preempts state law and that the trustees lack the power to honor the levies made upon them by the State of California.

20. The above described dispute between the parties has continued from the dates of the service of the Notice of [sic] Withhold alleged above and will continue into future years in that the Board will continue to attempt levy and garnishment of the defendant Trust Fund for the collection of the tax obligations of defendant's tax debtor beneficiaries and defendants will continue to refuse to honor the Board's levies in this regard. Accordingly, a declaration by this court of the parties' respective rights is required to fully and finally resolve this controversy.

WHEREFORE, plaintiff prays judgment as follows:

1. That defendants wrongfully failed and refused to honor the levies of the Board upon defendant Trust Fund in collection of the tax indebtedness of beneficiaries Murphy, Salcedo and Zarate;

2. That the Board has been damaged as a direct and proximate result of defendants' wrongful failure and refusal to honor the Board's levy and garnishment and that the amount of said damage is equal to the accruals existing in favor of Murphy, Salcedo and Zarate, at the time of said levy plus interest;

3. That the Board be awarded judgment against defendants in a sum equal to the amount of said accruals as hereafter determined to exist through discovery;

4. That the court declare defendants legally obligated to honor all future levies by the Board upon defendant Trust Fund in collection of tax delinquencies of the beneficiaries of defendant Trust Fund;

5. That plaintiff be awarded costs of suit herein and such other relief as this court deem just and proper.

GEORGE DEUKMEJIAN,
Attorney General,
EDMOND B. MAMER,
PATTI S. KITCHING,
Deputy Attorneys General,
By /s/ PATTI S. KITCHING,
Attorneys for Plaintiff.

EXHIBIT "A".

AGREEMENT AND DECLARATION OF TRUST ESTABLISHING THE CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA.

ARTICLE 1 — PARTIES TO AGREEMENT

This Agreement and Declaration of Trust is made and entered into in the County of Los Angeles, State of California, upon the considerations hereinafter set forth, by and between the following parties:

1.01 Associations:

(a) Southern California Chapter of the Associated General Contractors of America.

(b) Home Builders Association of Los Angeles, Orange and Ventura Counties, successor to Home Builders Institute, Inc.

(c) Engineering and Grading Contractors' Association of California, Inc.

(d) Building Contractors' Association of California, Inc.

1.02 Union:

Southern California District Council of Laborers for and on behalf of the District Council and its affiliated Local Unions of the International Hod Carriers, Building and Common Laborers' Union of America, A.F.L.-C.I.O. Subsequent to the execution of the Collective Bargaining Agreement, described in Section 3.01(a), International Hod Carriers, Building and Common Laborers' Union of America changed its name to "Laborers' International Union of North America." Any reference herein to "International

Hod Carriers, Building and Common Laborers' Union of America" shall be deemed to likewise refer to "Laborers' International Union of North America."

ARTICLE II — REASONS FOR AGREEMENT

2.01 The Union and the Associations have entered into collective bargaining agreements which provide, among other things, for the establishment of a fund for the payment of paid vacations.

2.02 The Union and the Associations desire to establish a Vacation Fund as a Trust Fund for receiving contributions and to provide vacation benefits for eligible employees.

2.03 The Union and the Associations desire to set forth the terms and conditions under which the said Fund is to be established and administered; and to set forth the power and duties of the Trustees and nature of the benefits to be provided: and to set forth their agreement respecting such other matters as are pertinent to the Vacation Fund.

* * *

ARTICLE IV — CREATION OF TRUST

4.01 There is hereby created the Construction Laborers Vacation Trust for Southern California, which shall consist of all contributions required by the Collective Bargaining Agreements to be made for the establishment and maintenance of the Plan, and all interest, income and other returns thereon of any kind whatsoever, and any other property received or held by reason of or pursuant to this Trust.

. . .

4.03 No employee or beneficiary shall be entitled to receive any part of the contributions made or required tc be made to the Fund except as provided by the Plan.

4.04 The Board of Trustees shall have the continuing supervision, control and direction of the Fund for the uses,

purposes and duties set forth in this Trust Agreement and be vested with all right, title and interest to it except as the right to certain monies may vest in employees, as more particularly hereinafter set forth. The fund shall be administered by the Board of Trustees for the exclusive benefit of employees and the beneficiaries of such employees. Notwithstanding anything to the contrary contained in this Trust Agreement or in the Plan, any modification, amendment, extension or renewal hereof or of the Plan, no portion of the Fund shall at any time revert to, or be recoverable by, any of the Associations, any individual employer, the Union, or any Local Union, or be used for, or diverted to, purposes other than for the exclusive benefit of employees or their beneficiaries under the Plan, and the payment of the administrative expenses of the Fund and the Plan, or refund of erroneous payments.

4.05 Neither the Associations, any individual employer, the Union, any Local Union, any employee, nor beneficiary under the Plan nor any other person shall have any right, title or interest in or to the Fund other than as specifically provided in this Trust Agreement. Neither the Fund nor any contributions to the Fund shall be in any manner liable for or subject to the debts, contracts or liabilities of any of the Associations, any individual employer, the Union, any Local Union, or any employee or beneficiary.

4.06 Each employee or beneficiary under the Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of his benefits hereunder or any other right or interest under the Plan, and the Board of Trustees shall not recognize, or be required to recognize, any such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such benefit, right or interest shall not be subject in any manner to vol-

untary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

4.07 Neither the Association nor any officer, agent, employee or committee member of the Association shall be liable to make contributions to the Fund or be under any other liability to the Fund or with respect to the Plan, except to the extent that he or it may be an individual employer required to make contributions to the Fund with respect to his or its own individual or joint venture operations, or to the extent he may incur liability as a Trustee as hereinafter provided. The liability of any individual employer to the Fund, or with respect to the Plan, shall be limited to the payments required by the Collective Bargaining Agreements with respect to his or its individual or joint venture operations, and in no event shall he or it be liable or responsible for any portion of the contributions due from other individual employers with respect to the operations of such individual employers. The individual employers shall not be required to make any further payments or contributions to the cost of operation of the Fund or of the Plan, except as may be hereafter provided in the Collective Bargaining Agreements.

. . .

ARTICLE V — TRUSTEES

5.01 The Fund and Plan shall be administered by a Board of Trustees consisting of sixteen Trustees, eight of whom shall be designated "Employer Trustees" and eight of whom shall be designated "Union Trustees."

5.02 The Employer Trustees shall be appointed in writing by the Associations, which Associations are irrevocably designated by each individual employer as his or its

attorneys-in-fact for the purpose of appointing and removing Trustees and successor Trustees.

5.03 The Union Trustees shall be appointed by majority vote of those delegates to the District Council who represent Local Unions which are affiliated with the District Council and which have collective bargaining agreements with individual employers, which agreements provide for the making of employer contributions to this Fund; . . .

* * *

5.20 Functions, Power and Duties of Trustees:

(a) The Associations, individual employers, and the Union and Local Unions irrevocably grant Power of Attorney to the Trustees now in office or subsequently appointed in accordance with the provisions of this Agreement and Declaration of Trust to administer said Fund and, as the representative of such parties, to exercise rights granted to the Trustees under Section 9.01.

(b) The Board of Trustees shall have the power to administer the Fund and to administer and maintain the Plan in effect, having and performing all powers and duties reasonably necessary to maintain and operate the Plan in such a way as to accomplish its objectives. The detailed basis on which benefits are to be paid are hereinafter set forth in ARTICLE IX hereof. The Board of Trustees may at any time, and from time to time, amend or modify such Plan. In no event shall any amendment or modification of the Plan cause or result in any portion of the Fund reverting to, or being recoverable by, any of the Associations, any individual employer, the Union, or any Local Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of employees or their beneficiaries under the Plan and the payment of the

administrative expenses of the Fund and the Plan, or refund or erroneous payments.

* * *

ARTICLE VI — CONTRIBUTIONS

6.01 Contributions shall be paid into the Fund in such manner and with such reports as the Board of Trustees may prescribe.

* * *

ARTICLE VII — GENERAL PROVISIONS

* * *

7.07 Subject to the provisions of the Collective Bargaining Agreements, the rights and duties of all parties, including the Associations, the individual employers, the Union, the Local Unions, the employees and their beneficiaries, and the Trustees, shall be governed by the provisions of this Trust Agreement and the Plan and any insurance policies or contracts procured or executed pursuant to this Trust Agreement.

7.08 No employee, or other beneficiary, shall have any right or claim to benefits under the Plan, other than as specified in such Plan. Any dispute as to eligibility, type, amount or duration of benefit shall be resolved by the Board of Trustees under and pursuant to the Plan, and its decision of the dispute shall be final and binding upon all parties thereto. No action may be brought for benefits under the Plan or to enforce any right thereunder until after the claim therefor has been submitted to, and determined by the Board, and thereafter the only action that may be brought is one to enforce the decision of the Board. Neither the Associations, any individual employer, the Union, any Local Union, nor any of the Trustees shall be liable for the

failure or omission for any reason to pay any benefits under the Plan.

* * *

ARTICLE IX — THE PLAN

9.01 On and after July 1, 1966, employees entitled to vacation benefits shall have the right to be paid the sums credited to their respective vacation amounts, subject to the terms and conditions as may be provided by regulation or resolution of the Board of Trustees pursuant to the authority given by this Agreement.

9.02 On or about July 1, 1966, an employee entitled to benefits under this Trust Agreement shall have the right to receive the monies credited to his vacation account by reason of work performed by him in the period June 1, 1965 through March 31, 1966. . . .

9.04 Not earlier than January 1 nor later than March 31 of any year, an employee shall make application to the Trust for his normal distribution of vacation benefits, such application to be made in such manner and on such form as the Trustees shall from time to time prescribe. . . .

9.07 Contributions to the Fund and any liquidated damages payable in connection therewith, shall be deemed to be, and shall be, a part of the wages due to the employees with respect to whose work such payments are made. No individual employer shall have any right, title or interest in such contributions, or any part thereof, and no part thereof shall ever revert to any such individual employer. Insofar as consistent with the other provisions of this Agreement, contributions shall be treated and reported as a part of the compensation earned by the employee at the time the work to which the contributions pertain is performed, subject to the terms of this Agreement, and shall be deemed to be, and shall be treated as, subject to withholding tax and social

security and unemployment taxes as a part of the total compensation payable at the end of the individual employer's payroll period during which such work is performed or paid for, but the full per hour contribution shall be transmitted to the Fund. Such contributions shall not be a part of the hourly wage rates for the purpose of computing overtime, or reporting time or for any other purpose of the Collective Bargaining Agreement, or part of the "regular rate" or "basic hourly rate" for the purpose of the Federal Fair Labor Standards Act or the Walsh-Healy Act or any other law, ordinance or regulation, except that if, consistent with the foregoing, such contributions can be considered and treated as a part of the wages prevailing in the area for the purpose of the Federal Davis-Bacon Act and similar federal, state or local laws, ordinances or regulations, they shall be so considered and treated. If any administrative or judicial ruling holds that any provision of this Agreement prevents or defeats any of the objectives stated in this section, the parties will forthwith enter into negotiations with regard to the amendment of this Agreement in such respects as may be necessary to accomplish the objectives so stated, consistent with the other objectives and purposes of this Agreement, and any such amendment shall be effective, insofar as practicable, as of the date of this Agreement.

9.08. It is the intent and purpose of the Plan, and of this Agreement, and a material part of the consideration for the making of contributions to the Fund by individual employees, that the money in each vacation account shall be received by the employee entitled thereto personally. Accordingly, no payments due the Fund and no monies in vacation accounts established pursuant to the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any employee or any other persons and any such anticipation,

alienation, sale, transfer, assignment, pledge, encumbrance or charge shall be void and ineffective. The money credited to a vacation account shall be subject to withdrawal and distribution only at the times, in the manner and for the purposes specified in this Agreement.

* * *

Executed at Los Angeles County, California, as of the 14th day of April, 1966.

EACH OF THOSE SIGNING AS "ASSOCIATION" BELOW EXPRESSLY WARRANTS THAT HE IS AUTHORIZED TO EXECUTE THIS AGREEMENT ON BEHALF OF THE ASSOCIATION LISTED OVER HIS SIGNATURE AND WARRANTS THAT ALL OF THE ELIGIBLE MEMBERS OF SAID "ASSOCIATION" ARE PARTIES TO AND BOUND BY THE TERMS AND PROVISIONS OF THIS AGREEMENT FOR ITS DURATION; AND FURTHER WARRANTS THAT ANY INDIVIDUAL EMPLOYER WHO SHALL BECOME AN ELIGIBLE MEMBER OF SAID "ASSOCIATION" ON OR AFTER THIS DATE AND DURING THE TERM OF THIS AGREEMENT SHALL AUTOMATICALLY BECOME SUBJECT TO AND BOUND BY THIS AGREEMENT DURING ITS TERM.

Associations

SOUTHERN CALIFORNIA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

/s/ By W.D. Shaw

BUILDING CONTRACTORS' ASSOCIATION OF CALIFORNIA, INC.

/s/ By Edward M. Sills

ENGINEERING AND GRADING CONTRACTORS' ASSOCIATION, INC.

/s/ By C.W. Burke

HOME BUILDERS ASSOCIATION OF LOS ANGELES, ORANGE AND VENTURA COUNTIES, (successor to HOME BUILDERS INSTITUTE, INC.)

/s/ By R.A. Alsweet

Union

SOUTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS, INDIVIDUALLY AND FOR AND ON BEHALF OF ITS AFFILIATED LOCAL UNIONS IN SOUTHERN CALIFORNIA, WHICH HAVE JURISDICTION OVER THE WORK AS SET FORTH IN THAT CERTAIN DOCUMENT KNOWN AS "MASTER LABOR AGREEMENT" BETWEEN SOUTHERN CALIFORNIA GENERAL CONTRACTORS AND SOUTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS," DATED JUNE 1, 1965.

/s/ By James V. Flores

/s/ By Ray Waters

/s/ By James V. Brimhall

The undersigned, named as Original Trustees in the foregoing Agreement and Declaration of Trust, do acknowledge

they have read the foregoing instrument, do understand the contents thereof, and do hereby agree to act as Trustees thereunder, to comply with all of its terms and provisions, and to hold the Fund created by said Agreement in trust for the uses and purposes set forth in the Agreement.

/s/ James V. Flores

/s/ James H. Crowell

/s/ Ray Waters

/s/ Ray Mendoza

/s/ Joseph Y. Murdock

/s/ Ray M. Wilson

/s/ Don E. Graves

/s/ Nick Orsura

/s/ S.J. Hibbler

/s/ Herb W. Smith

/s/ R.C. Gallyon

/s/ Peter E. Johnson

/s/ Reed Sprinkel

/s/ E.M. Barker

/s/ R.A. Alsweet

/s/ Syd Carnine

DATED: April 14, 1966.

EXHIBIT "H".

LAW OFFICES
RICHMAN & GARRETT
A Professional Corporation

January 7, 1980

Mr. John D. Dykeman
Special Procedures Section
Franchise Tax Board
Sacramento, California 95867

Re: Construction Laborers Vacation Trust for Southern California
Your File No. 340:97:JDD:dmf

Dear Mr. Dykeman:

We have now finally received the opinion letter from the United States Department of Labor relative to the liens which you have served upon us for personal income tax, as well as other liens which have been served upon us by the Franchise Tax Board. We are enclosing a copy of that opinion letter.

The conclusion which is set forth in the first full paragraph of the fourth page is that Section 514 of ERISA pre-empts State law and that the Trustees lack the power to honor the levies made upon us by the State of California.

Co-counsel propose to recommend to the Board of Trustees at their next meeting that the monies which have been withheld pending the receipt of this opinion letter be distributed to the Plan participants.

Since the next meeting has not yet been scheduled, we would assume that it would not be set before the middle of February, 1980, in the event you desire to institute legal action to test this opinion.

Very truly yours,
RICHMAN & GARRETT

LR/hal Lionel Richman

cc(w/enc.): George M Cox, Esq.
Mr. Edward Ashton
Mr. Ray M. Wilson
Construction Laborers Vacation Trust
for Southern California

U.S. Department of Labor

Dec. 28 1979

Mr. Lionel Richman
Richman & Garrett
1336 Wilshire Boulevard
Los Angeles, California 90017

Dear Mr. Richman:

This is in response to your request for an opinion on behalf of the Construction Laborers Vacation Trust for Southern California (Plan) regarding the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the trustees of the Plan may honor (1) the process of any state judicial or administrative agency seeking to levy upon benefits due a beneficiary under the Plan, and (2) process from the U.S. Internal Revenue Service (IRS) directed to monies due a beneficiary under the Plan.

You advise that the Plan is created by a written agreement and declaration of trust pursuant to section 302 of the Labor Management Relations Act, 1947, as amended (LMRA). Under a collective bargaining agreement, employers are obligated to pay to the Plan a fixed sum per hour for each hour worked on behalf of each employee covered by the collective bargaining agreement. The contributions are added to the employee's pay for the purpose of calculating appropriate taxes and then are deducted and transmitted to the Plan. The Plan holds the funds for annual distribution. The State of California, acting through the State Baord of Equalization, has served a "Notice to Withhold" for sales and use tax under state law, upon the Plan, seeking to seize benefits due a particular beneficiary under the Plan. Prior to the effective date of ERISA, the Franchise Tax Board of the State of California made similar levies for state in-

come taxes and other state agencies made similar levies for unpaid unemployment insurance contributions due from beneficiaries who were formerly employers. From time to time, the U.S. Internal Revenue Service (IRS) also has made such levies.

You further advise that section 9.08 of the trust instrument reads as follows:

> "It is the intent and purpose of the Plan, and of this Agreement, and a material part of the consideration for the making of contributions to the Fund by individual employers, that the money in each vacation account shall be received by the employee entitled thereto personally. Accordingly, no payments due the Fund and no monies in vacation accounts established pursuant to the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any employee or other persons and any such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge shall be void and ineffective. The money credited to a vacation account shall be subject to withdrawal and distributed only at the times, in the manner and for the purposes specified in this Agreement."

We assume that in using the word "beneficiary" in your letter you mean a "participant" or "beneficiary" as these terms are defined by ERISA sections 3(7) and (8).

Section 403(c)(1) of ERISA provides, as here relevant, that "the assets of a plan . . . shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." Similarly, section 404(a)(1) of ERISA provides, in part, that:

> . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan; . . . and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

Section 514 of ERISA provides, in part, as follows:

(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect January 1, 1975. . . .

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

Section 514(a) established a broad preemption of all state laws insofar as they may relate to any employee benefit plan

covered by title I of ERISA. The reasons for broad preemption of state laws under ERISA were succinctly stated by Senator Javits, a major sponsor and floor manager of the bill, during its final consideration as follows:

> Both the House and Senate bills, provided for preemption of State Law, but—with one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension plans not clearly connected to the Federal regulatory scheme.
>
> Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefits programs. 120 Cong. Rec. S15751 (daily ed. Aug. 22, 1974).

Based on the above, it is the position of the Department of Labor that the process of any state judicial or administrative agency seeking to levy for unpaid taxes or unpaid unemployment insurance contributions upon benefits due a participant or beneficiary under the Plan is pre-empted under ERISA section 514.

With regard to process from the IRS, section 514(d) of ERISA provides that no provision should be construed in such a way as to affect any other Federal law or any rule or regulation issued under the law. Section 6334(c) of the Internal Revenue Code of 1954, which was in effect before

the enactment of ERISA, provides that notwithstanding any other law of the United States, no property or right to property is exempt from a Federal tax levy other than certain property which is specifically made exempt under section 6334(a). The specific exemptions set forth in section 6334(a) do not include the type of benefits with which you are concerned. Therefore, it is the view of the Department that the trustees of the Plan may honor such IRS tax levies and, pursuant to ERISA section 514(d), not be in violation of ERISA sections 403(c)(1) and 404(a)(1).

It should be noted that no opinion is expressed herein as to any application of section 302 of the LMRA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 (copy enclosed). Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator
of Pension and Welfare
Benefit Programs

Enclosure

cc: Mr. George M. Cox
Cox, Castle, Nicholson & Weekes
2049 Century Park East, 28th Floor
Los Angeles, California 90067

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